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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

UNIVERSITY OF OREGON; OREGON
STATE UNIVERSITY; UNIVERSITY OF
SOUTHERN CALIFORNIA; ARIZONA
STATE UNIVERSITY; CALIFORNIA
INSTITUTE OF TECHNOLOGY;
CHAPMAN UNIVERSITY; CLAREMONT
MCKENNA COLLEGE; NORTHERN
ARIZONA UNIVERSITY; PITZER
COLLEGE; POMONA COLLEGE;
PRESIDENT AND BOARD OF TRUSTEES
OF SANTA CLARA COLLEGE; SCRIPPS
COLLEGE; SEATTLE UNIVERSITY;
STANFORD UNIVERSITY; SAINT
MARY'S COLLEGE OF CALIFORNIA;
UNIVERSITY OF ARIZONA; UNIVERSITY

Case No. 6:20-cv-01127-MK

JOINT STATUS REPORT

OF THE PACIFIC; UNIVERSITY OF SAN DIEGO; UNIVERSITY OF SAN FRANCISCO; and UNIVERSITY OF UTAH,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; CHAD F. WOLF, in his official capacity as Acting Secretary of the United States Department of Homeland Security; and MATTHEW ALBENCE, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement,

Defendants.

JOINT STATUS REPORT

On July 22, 2020, the Court directed the parties to file a joint status report by July 27, 2020. Pursuant to that directive, the parties state as follows:

Plaintiffs' Report

1. On July 24, 2020, Defendants issued a new Broadcast Message entitled “Follow-up: ICE continues March Guidance for Fall School Term” (the “July Rescission”), published at <https://www.ice.gov/coronavirus>. The July Rescission refers back to the March 9, 2020 and March 13, 2020 guidance published at <https://www.ice.gov/coronavirus> (the “March 2020 Guidance”).

2. The July Rescission provides:

The March 2020 [G]uidance applies to nonimmigrant students who were actively enrolled at a U.S. school on March 9, 2020, and are otherwise complying with the terms of their nonimmigrant status, whether from inside the United States or abroad. SEVP will not issue a temporary final rule impacting F and M students for the fall school term.

3. The July Rescission goes on to provide, in a section entitled “Summary of March 2020 Guidance for Continuing Students”:

As stated in the March 2020 guidance, Active F and M students will be permitted to temporarily count online classes toward a full course of study in excess of the regulatory limits stated in 8 C.F.R. § 214.2(f)(6)(i)(G) and 8 C.F.R. § 214.2(m)(9)(v). The March 2020 guidance applies to continuing F and M nonimmigrant students who were in valid F-1 or M-1 nonimmigrant status on March 9, 2020, including those previously enrolled in entirely online classes who are outside of the United States and seeking to re-enter the country this fall. Students actively enrolled at a U.S. school on March 9, 2020 who subsequently took courses online while outside of the country can re-enter the United States, even if their school is engaged solely in distance learning.

4. The July Rescission goes on to provide, in a section entitled “Summary of March 2020 Guidance for Initial Students”:

In accordance with March 2020 guidance, F and M students in new or initial status after March 9, 2020, will not be able to enter the United States to enroll in a

U.S. school as a nonimmigrant student for the fall term to pursue a full course of study that is 100 percent online. Also consistent with the SEVP Broadcast Message dated March 9, 2020, designated school officials should not issue a Form I-20, “Certificate of Eligibility for Nonimmigrant Student Status,” for a student in new or initial status who is outside of the United States and plans to take classes at an SEVP-certified educational institution that is operating 100 percent online.

5. On July 24, 2020, Defendants published a document entitled “Clarifying Questions for Fall 2020 Based On March 9 Spring Guidance Broadcast” (“July 24 FAQ”) at <https://www.ice.gov/coronavirus>. Question 1 of the July 24 FAQ provides:

1. Can F or M students outside the United States obtain a visa to study in the United States if their program of study will be fully online for the fall 2020 session?

A. Whether an individual is eligible to receive an F or M visa is a decision that must be made by the U.S. Department of State and is not made by SEVP. Consistent with the SEVP Broadcast Message dated March 9, 2020, DSOs should not issue a Form I-20, “Certificate of Eligibility for Nonimmigrant Student Status,” for a student in new or Initial status who is outside of the United States and plans to take classes at an SEVP-certified educational institution fully online.

As a result, new or initial nonimmigrant students who intend to pursue a full course of study that will be conducted completely online will likely not be able to obtain an F-1 or M-1 visa to study in the United States. . . .

6. Question 2 of the July 24 FAQ provides:

2. Can students apply for a visa to enter the United States for a hybrid program of study with online components beyond the limitations at 8 CFR 214.2(f)(6)(i)(G)?

A. Whether an individual is eligible to apply for an F or M visa is a decision that must be made by the U.S. Department of State and is not made by SEVP. However, per the March 2020 guidance nonimmigrant students seeking to enroll in a program of study that includes in-person and online components beyond the limitations at 8 CFR 214.2(f)(6)(i)(G), are able to maintain F-1 or M-1 nonimmigrant status if pursuing such programs during the fall 2020 school term. Nonimmigrant students in New or Initial status after March 9 will not be able to enter the United States to enroll in a U.S. school as a nonimmigrant student for the fall term to pursue a full course of study that is 100 percent online.

7. Plaintiffs believe that the import of this guidance is that Defendants will not allow students with valid F-1 or M-1 visas to enter the United States if they are new students and intend to take only online courses during the fall semester.

8. Prior to July 21, 2020, the State Department's Foreign Affairs Manual, available at <https://www.fam.state.gov>, provided at 9 FAM 402.5-5(C)a.(2)(a):

If an F-1 or M-1 applicant does not plan to take any in-person classes in the United States and could complete the intended course of study online from his or her residence abroad, but prefers for other reasons to be in the United States while pursuing the intended study online, his or her purpose of travel is not solely to pursue a full course of study at an approved institution, and you should refuse the application pursuant to INA 214(b).

9. That provision was removed from the version of the Foreign Affairs Manual dated July 21, 2020, which now provides only that an applicant applying for an F-1 or M-1 student visa must have an “[i]ntent to enter the United States solely for the purpose of pursuing a full course of study at an approved institution.”

10. Plaintiffs are conferring with Defendants and considering whether further legal action is appropriate in light of these developments.

Defendants' Report

1. Plaintiffs filed this lawsuit challenging the July 6, 2020 broadcast message and the July 7, 2020 Frequently-Asked-Questions (the “July Broadcast”). For relief, they sought vacatur of the July Broadcast and reinstatement of the March 9, 2020 and March 13, 2020 guidance (the “March Broadcast”).

2. In a July 17, 2020 Joint Status Report, Defendants agreed to rescind the July Broadcast and reinstate the March Broadcast, but Plaintiffs expressed concern that “removal of the July Broadcast from <https://www.ice.gov/coronavirus> without any further publication of a

notice that the July Broadcast has been rescinded and that the March Broadcast is, once again, in force and effect, will perpetuate confusion” ECF 45 at 3.

3. On July 24, 2020, Defendants issued a new Broadcast Message entitled “Follow-up: ICE continues March Guidance for Fall School Term” (the “Follow-up Broadcast,” published at <https://www.ice.gov/coronavirus>). The Follow-up Broadcast confirms that the March Broadcast is in force and effect.¹ The Follow-up Broadcast also states that the Student Exchange Visitor Program “will not issue a temporary final rule impacting F and M students for the fall school term.”

4. In light of Defendants’ further publication of a notice that the March Broadcast is in force and effect, Defendants’ view is that Plaintiffs’ lawsuit challenging the July Broadcast and seeking to reinstate the March Broadcast is moot.

Joint Update

The parties jointly request an additional 10 days in which to confer and thereafter provide an update to the Court.

DATED: July 27, 2020

/s/ Kevin S. Reed

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¹ Broadcast Message: Follow-up: ICE continues March Guidance for Fall School Term, available at <https://www.ice.gov/doclib/sevis/pdf/bcmFall2020guidance.pdf>. *See also* Clarifying Questions for Fall 2020 Based on March 9 Spring Guidance Broadcast, available at <https://www.ice.gov/doclib/sevis/pdf/fall2020faq.pdf>.

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Certification of Service

I hereby certify that this document has been filed through the Court's ECF system and will be sent electronically to the registered participants.

DATED: July 27, 2020

/s/ *Kevin S. Reed*

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